

90-821

Supreme Court, U.S.
FILED

NOV 21 1990

JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1990

EDWARD HALAS,
Petitioner,

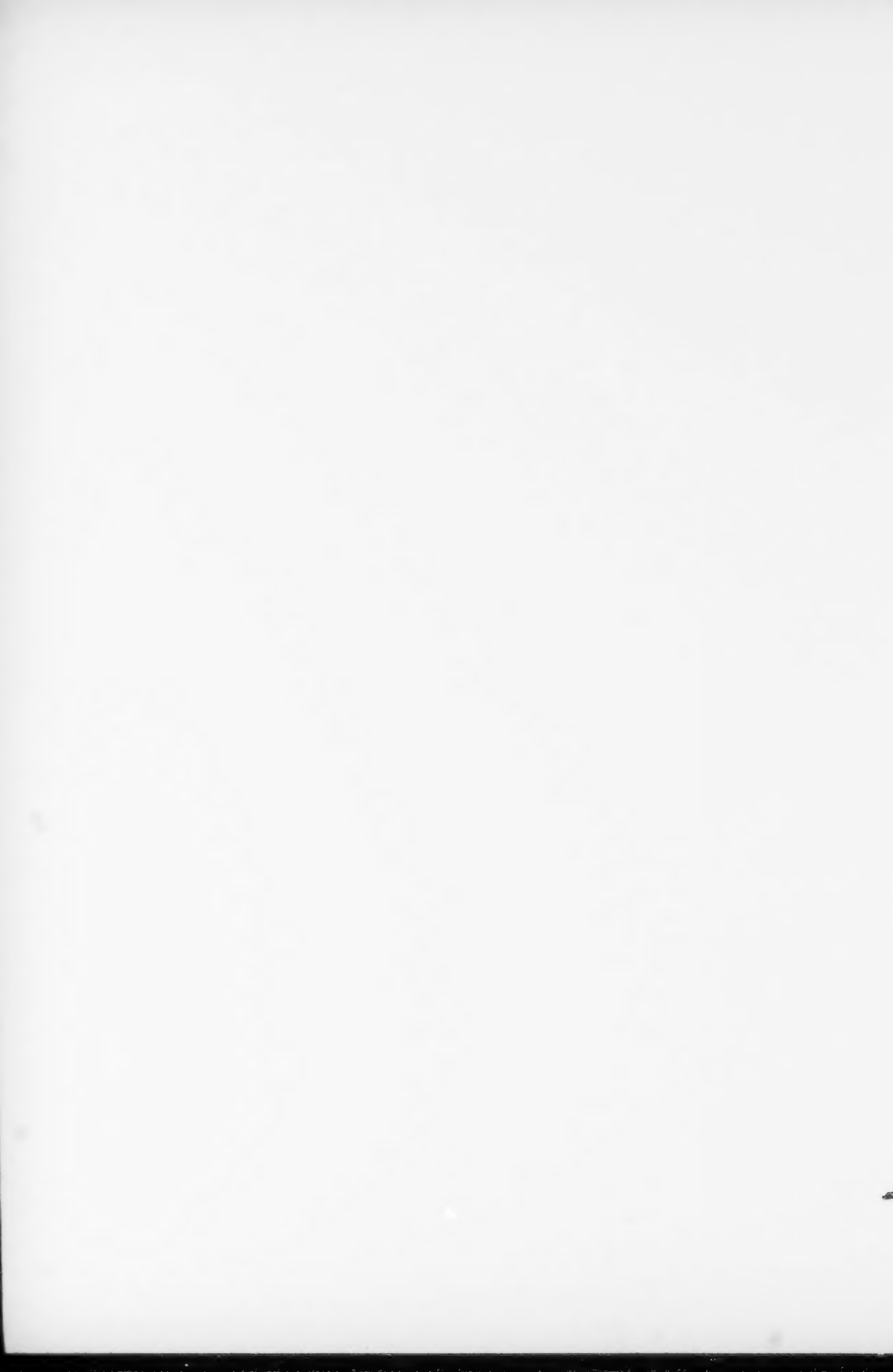
v.

UNITED STATES,
Respondent

CASE 90-5119

PETITION FOR A WRIT OF CERTIORARI TO U.S.
COURT OF APPEALS TO THE FEDERAL CIRCUIT

EDWARD HALAS,
Petitioner,
P.O. BOX 2682
Detroit, MI 48231.



QUESTION PRESENTED

Whether, the implication of patent infringement is to be considered as an admission of willful infringement and subject to the summary judgement of triple damages to the inventor-petitioner: the irrelevant defence of the United States is to conduct a determination of a Patent Rights determination on a private patent prosecuted solely by the Petitioner and obtained 3584246 Letters Patent on 8 June 1971. The case was against the Department of Energy and the Department of Army is not a party to the case by implication or otherwise. Essentially the case would be over by the admission of infringement. The irrelevant and lack of jurisdiction statute that the United States relies upon is a recent reference passed in the Federal Register in 1988 some seventeen years after the Petitioner-inventor received his letters patents.

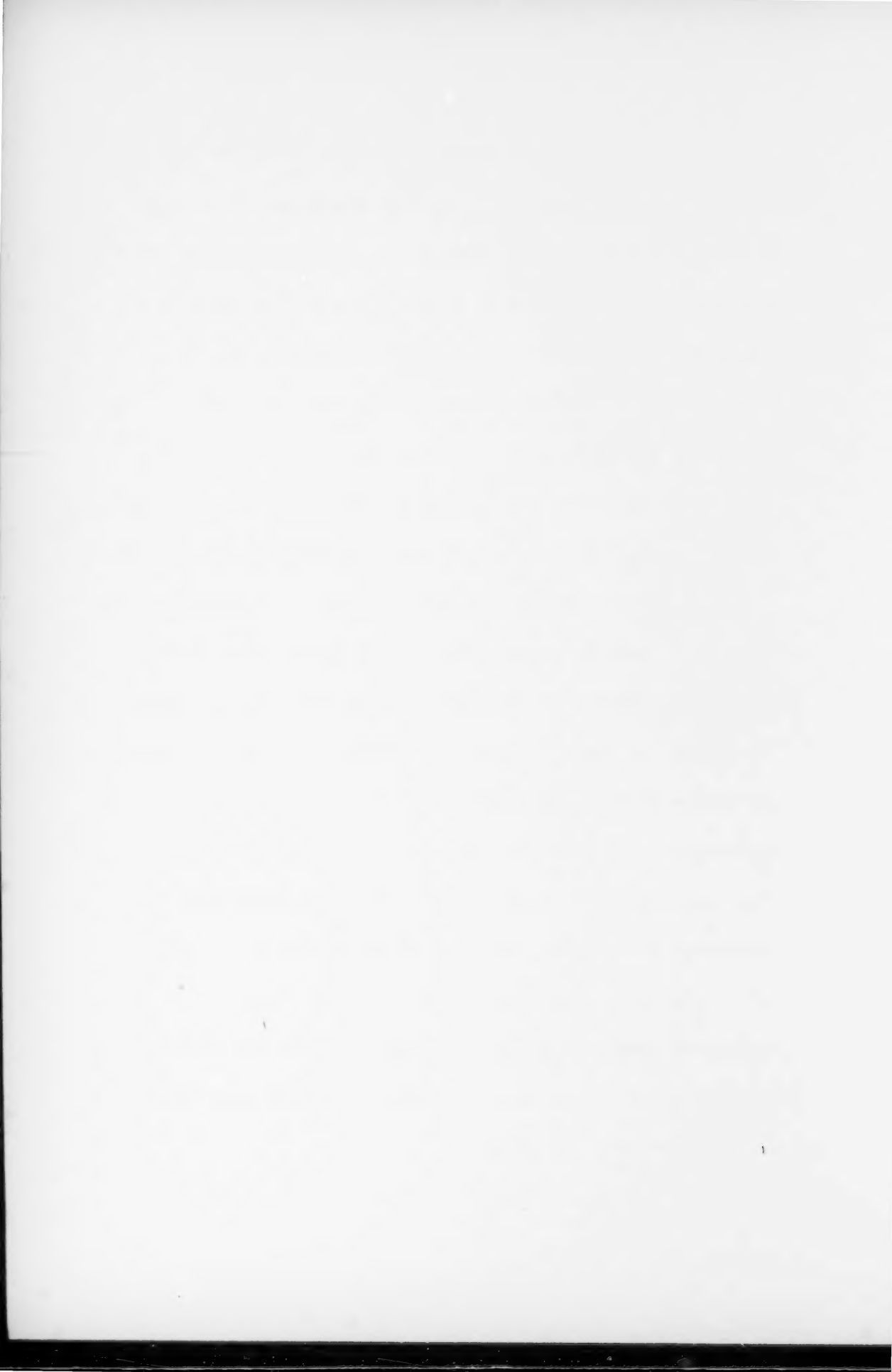


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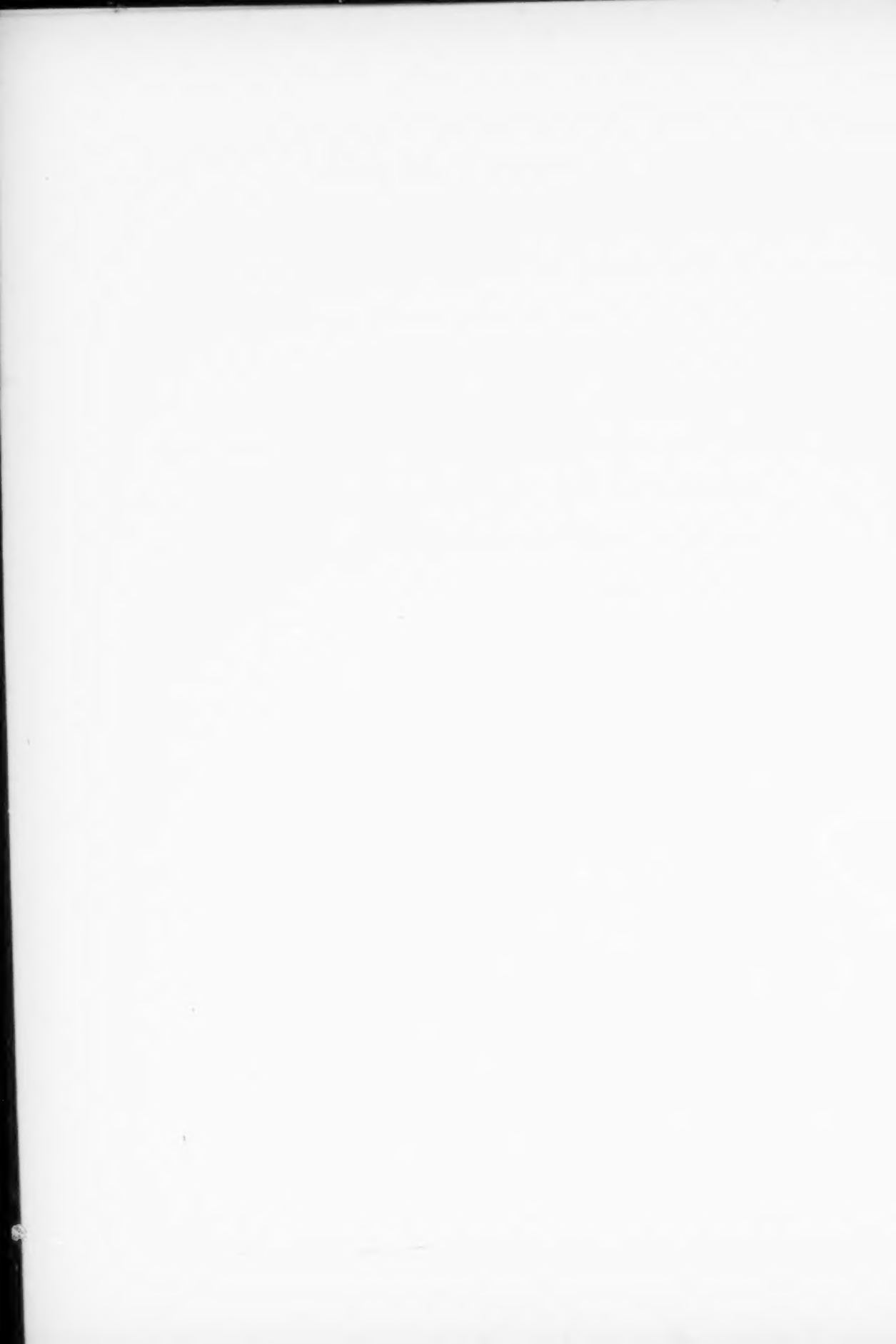
PETITION FOR A WRIT OF CERTIORARI

The Petitioner , Edward Halas, prays
that a writ of certiorari issue to review
the order of the U.S. Court of Appeals ,
for the Federal Circuit.



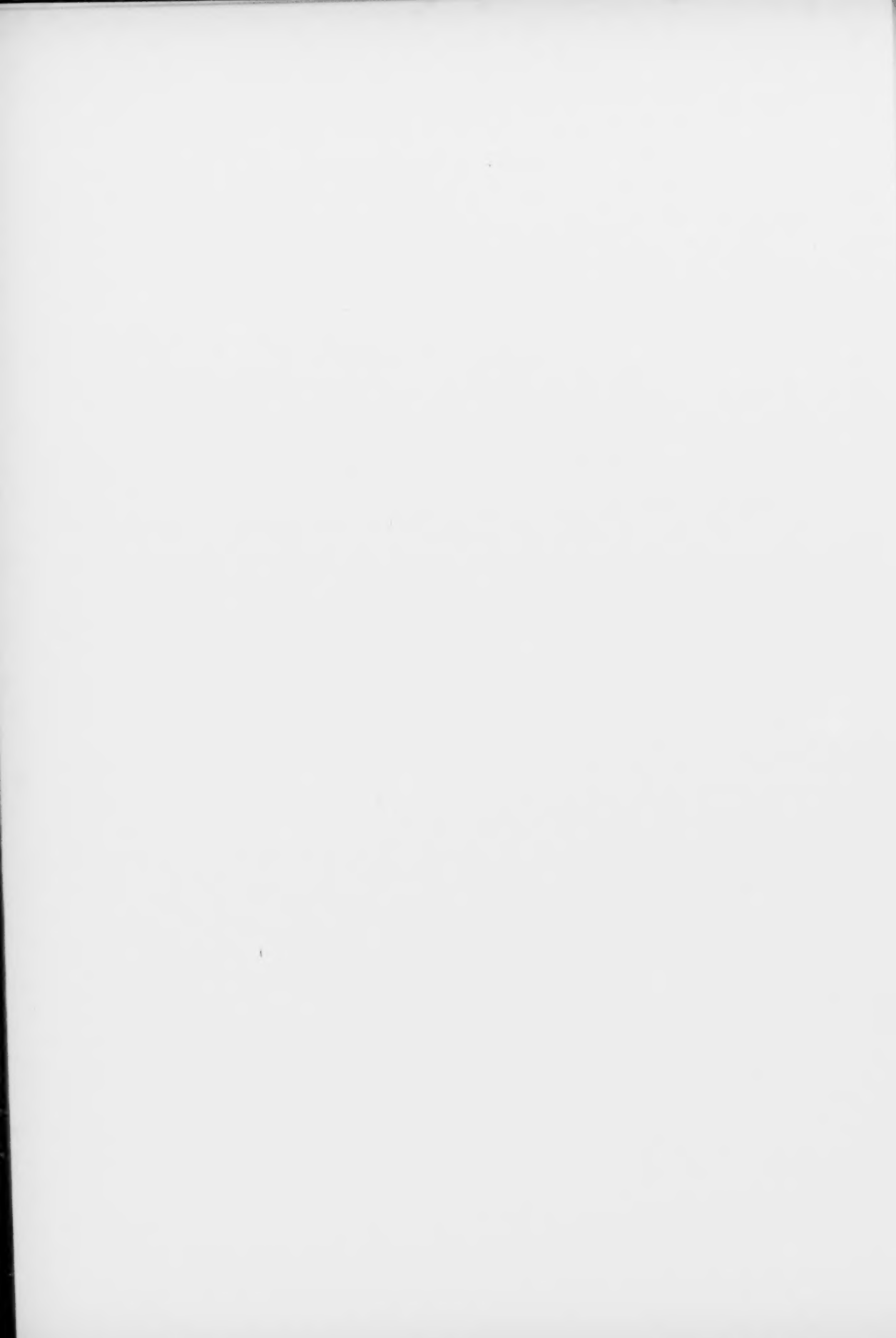
ORDERS CITED BELOW

1. The order of Judge Bohdan A. Futely of the United States Court of Claims is in Appendix "A" page 17 .
2. The order of Judges Michel, Cowen and Skelton of the United States Court of Appeals for the Federal Courcuit is Appendix "B" pages 18-19 .



JURISDICTION

The final order for the United States Court of Appeals for the Federal Circuit was dated 27 August 1990. This petition for Certiorari was filed within the ninety (90) days period allowed within the rules of the Court.



CONSTITUTIONAL PROVISION CITED

The United States Constitution, Ammendment

Four:

Cites: the right of the people to be
secure in their persons, house, paers
and effects against unreasonable search
and seizure.

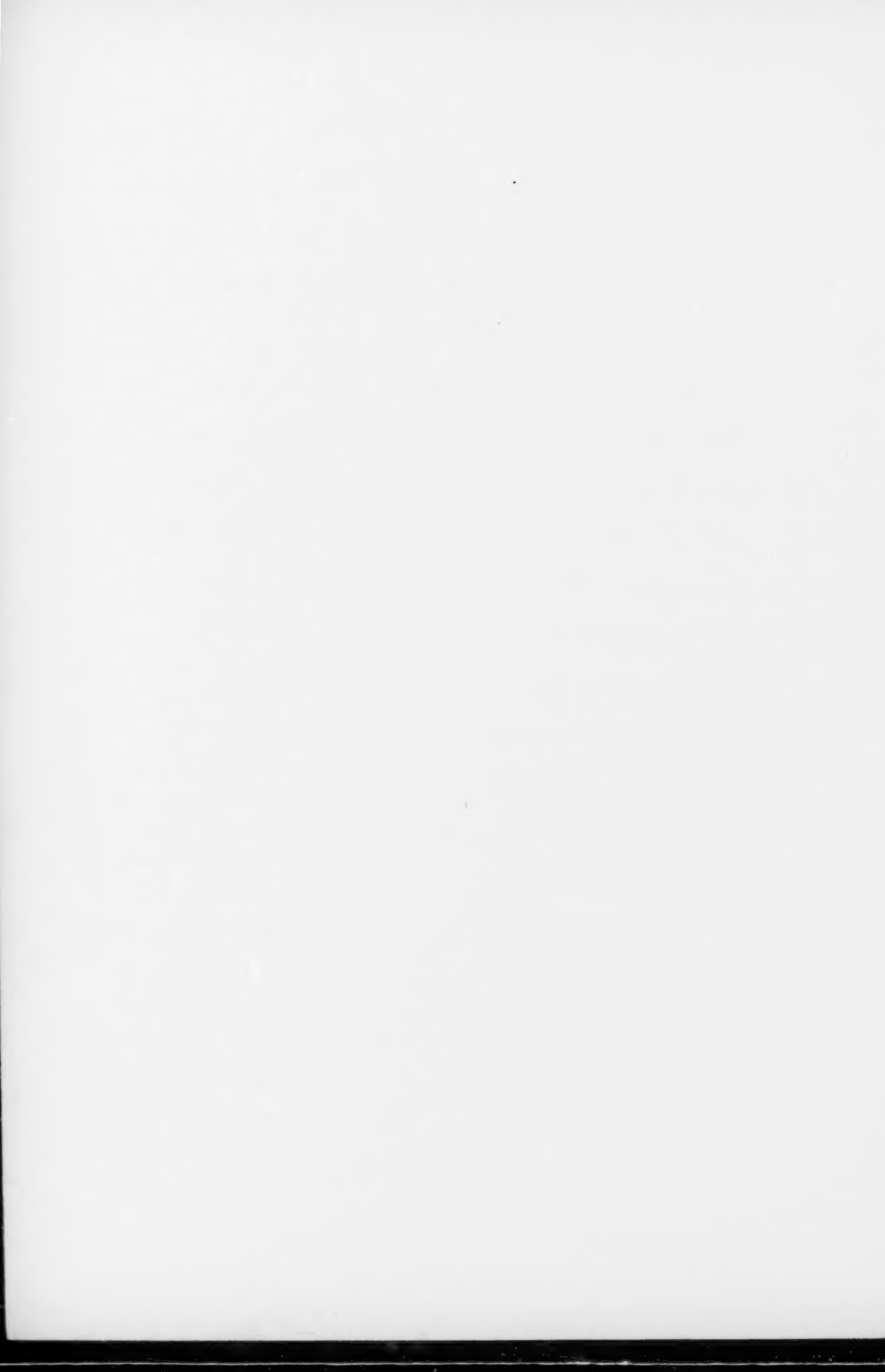


STATEMENT OF THE CASE

1, The U.S. Department of Energy infringed upon Petitioner's Patent Rights for U.S. Patent Number 3584246 issued on June 8, 1971.

2. Essentially the patent refers to a keystone coil construction that is the most important way of winding Superconducting coils from any given material. Essentially the materials of the majority of superconducting coils possess sufficient malleability to permit this type of construction. There are also some other unique features essential to the proper working of the technology of this type of field.

3. The first known coil was invented by Michael Farady in about 1831 and was suitable for materials that could be drawn into wire such as copper. However the physics of coils are very difficult to advance. Faraday's coil was once estimated to be second in importance to the discovery



of the wheel. The coil structure that would permit the majority of superconducting materials to be fabricated into useful products as are used by the Department of Energy in the large cyclotron structures were only possible because of the Halas coil invention. These coils were fabricated in Government Laboratories and not either publicized or described to permit earlier court action. It is possible for Government Agencies to steal patent rights without any intent to pay royalties of any kind, and this is what happened here.

4. The sole owner of the Patent referenced herein is Edward Halas with no licenses or rights issued to anyone.

5. Essentially both the U.S. Claims Court and the United Court of Appeals for the Federal Circuit are aware that unauthorized infringement did take place by the Department of Energy and that damages would be in the nature of triple damages for this type of infringement.

6. The rights of the Petitioner are guaranteed by the fourth ammendment against unreasonable search and seizure. Initially the Patent was violated by ambitious person's within the Department of Energy who knew that many years would pass before the theft would be discovered. By then the inventor would either be deceased or hopelessly in debt. Certainly this is normally what . happens to most inventors who die early deaths because of the unhappiness their discoveries bring to their financial structure.

7. While the Courts are very careful to make it as difficult as possible to obtain Patents, making it an expensive and painful process, they are remiss in guaranteeing the rights of Inventors against all the inuries that harrassment and unlawful acts upon their rights do occur. Certainly the Department of Energy felt no pain with the gain from misappropriating the Petitioner's Patent rights.

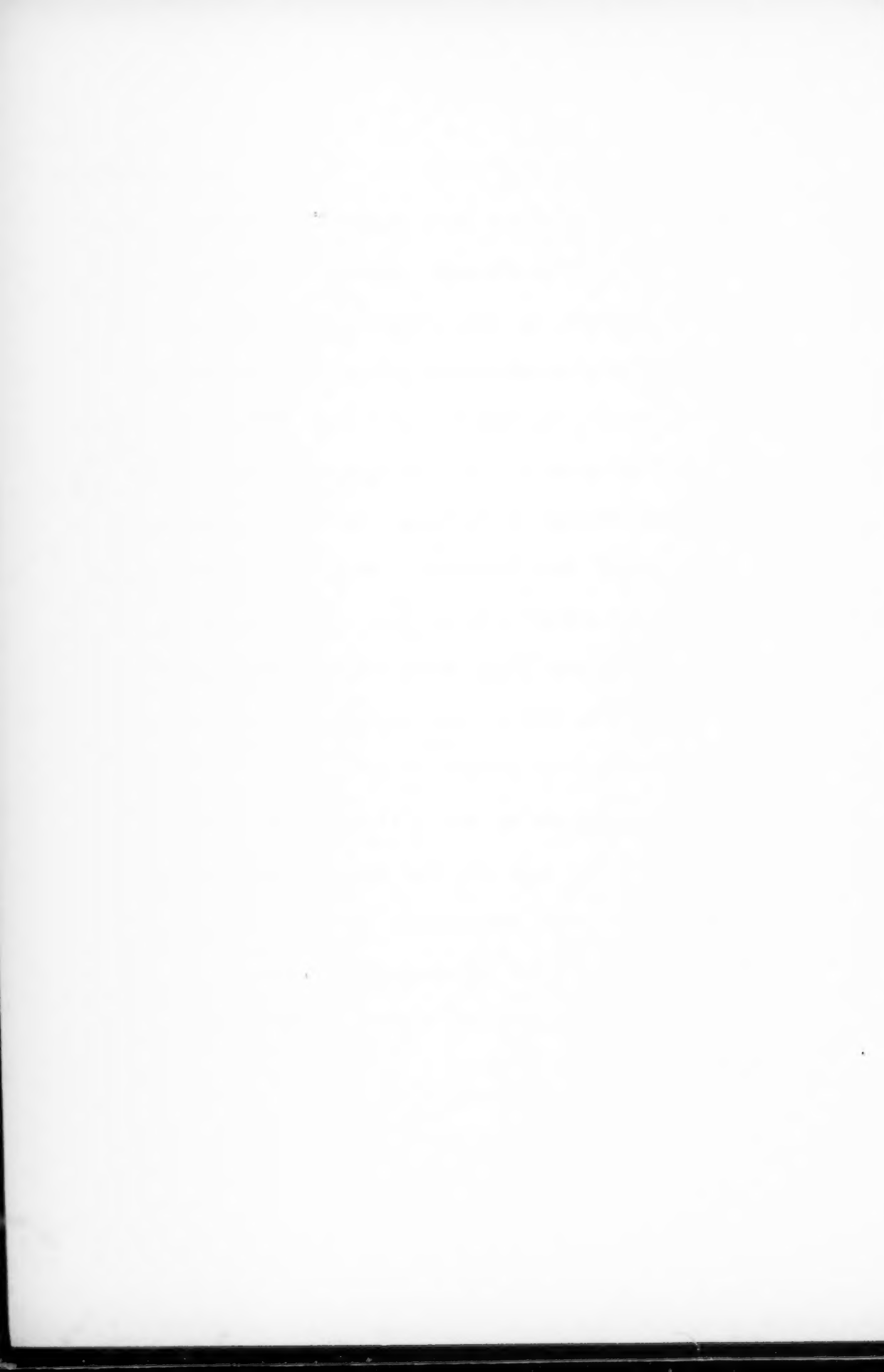
8. Judge Futely did not have any legal

grounds for going into the rights consideration for something that has been public knowledge since 1971, the Patent rights of Halas that were violated by the Department of Energy.

9. There was a serious error by the United States Court of Appeal for the Federal Circuit in an inadequate and unenthusiastic review of Judge Futely's errors. Perhaps they were hoping that the inventor would be discouraged greatly by their rebuff and aloofness in not wanting to find what they knew would certainly be there, an illegal trespass to compound the original injuries.

10. The admission of infringement goes the case into the second stage in which an audit of the royalties with triple damages are to be ascertained upon.

11. The United States Court of Appeals made a serious error .



REASONS RELIED UPON
FOR ALLOWANCE OF THE WRIT

The Petitioner's Patent rights were clearly violated. It would appear that the Government Attorney could see no restriction in continuing the violation of the Petitioner's rights by any form of harrassment of any type. The Fourth ammendment is not a frivolous right but was the needed ingredient to protect the individual from the unbridled enthusiasm of the public authority to destroy the individual in the guise of the public interest.

The public interest is best served when the laws of Congress are followed carefully and not exceeded in either scope or intent.

All that can happen is the permanent injury to bring still further claims for additional injuries in the process.

It would have been better for Judge Futely not to have made an error, but it would have been better still for the Court of Appeal to have pointed that out to Judge



Futely and to have given him good review. The Petitioner is grieved additionally and distressed that the Court system appears to be failing him, and more so the public interest, who is considering that invention is too hazardous to pursue.

ARGUMENT

THERE WAS INFRINGEMENT WITHOUT CONSIDERATION OF PAYMENT BY THE DEPARTMENT OF ENERGY. THE INTENT WAS TO AVOID PAYMENT OF ROYALTIES, BY CHEATING THE INVENTOR. THERE WAS AN ORDER BY JUDGE FUTELY ENTIRELY OUT OF ORDER AND ILL CONSIDERED WITHOUT ADEQUATE CAUSE OR JURISDICTION TO INVADE THE PETITIONER'S PRIVATE RIGHTS. THERE WAS AN ERRONEOUS CURSORY REVIEW BY THE U.S COURT OF APPEALS FOR THE FEDERAL CIRCUIT IN CITING THE AUTHORITY FOR JUDGE FUTELY'S ORDER, IN THAT THERE WAS NO AUTHORITY IN LAW FOR GOING OUTSIDE OF THE DEPARTMENT OF ENERGY FOR A FRIVOLOUS PURSUIT. THE PETITIONER HAS SEEN HIS RIGHTS LITERALLY VANISH COMPLETELY DURING THIS LEGAL PROCESS. SURELY THE COURTS CAN CONTAIN THEMSELVES WITHIN THE CONSTITUTION AND OBEY THE LAWS CORRECTLY. WHEN A REVIEW IS REQUESTED, IT IS BECAUSE OF A VERY SERIOUS BREACH, AND THE COURT OF APPEALS HAS TO CHECK THE MATTER FOR LEGALITY.

1. The Superconducting Coil Patent is the Petitioner's property which is entitled to be compensated by triple damages, by the Department of Energy.



2. The Petitioner spent the better part of his lifetime and the total amount of his resources in the years preceeding the invention, and in the difficult years after the issuance of the Patent. There were sacrifices of every conceivable type to provide the ways and means of bringing the discovery to the United States state of the art. This was intended to improve our society and it has and furthermore it will continue too, even if the Pettitioner never receives a single cent of royalty for an invention that follows in the greatness of Faradays's original coil back in 1831. The physics of coils are extremely difficult and very unappreciated, and much more so by Courts of law who are not properly versed in technology that becomes a precedent in time to follow. At this point in time, it appears that the inventor could follow the fate of inventors such as Rudolph Diesel, who disappeared mysteriously on his way to England with more details of his inventions, or Armstrong, the great inventor of frequency modulated radio

who had a very unfortunate end in Washinton many years ago after he was cheated out his patent rights in the Washington area. Its just that an important patent is such a valuable piece of property that it brings out the worst in human nature. An inventor is always at risk for personal harm by unlawful violations of his personal rights. The fourth ammendment is more than just a philosophical dream, it is a real thing in the United States that has made this country a haven for industrious people who accomplish more in such an environment than they could outside of it.

3. The invention was more than just a labor of love for the Petitioner, it was the consumer of the family resources for years, and still takes and has never given anything back but hardship. That is the legacy of invention, much unhappiness. I really doubt that anything could ever bring back the lost years of working under difficult circumstances to bring the ideas forward. The Patent system does advertise the

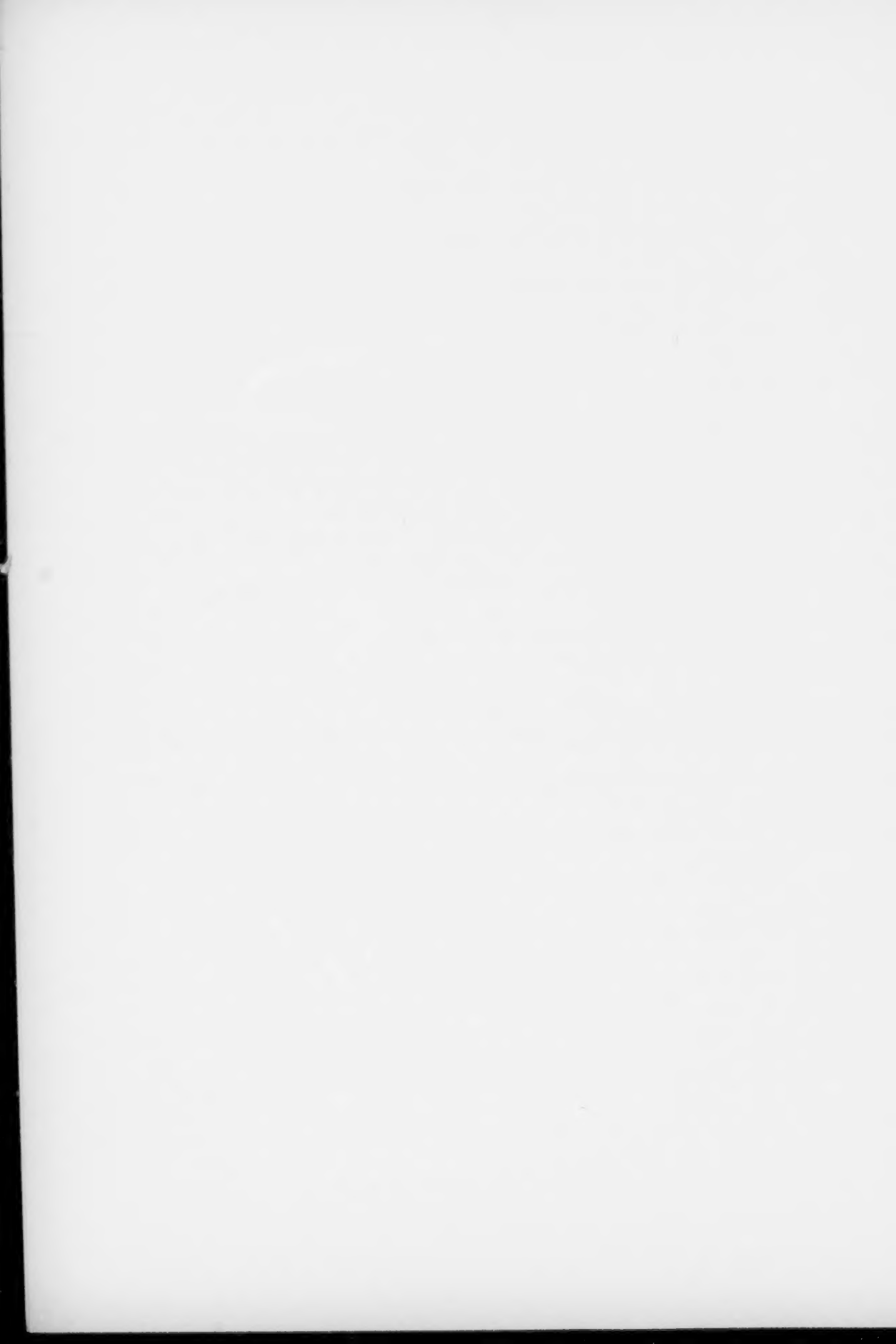
new art available and also for a nominal fee sell a copy to those who are interested. However the Patent Office laws confer upon the inventor a monopoly for a seventeen year term. Even the U.S. Government is also obligated to set an example and to stimulate commerce in this way. This essentially was formulated originally to discourage trade secrets, since when a skilled person who acquires certain new knowledge over the course of a lifetime would be encouraged to publish this new field or it would disappear with his eventual death. After seventeen years the Patent would then become public domain. But the inventor is entitled to be paid either royalties or some form of compensation for making use of these inventions. It goes without saying that there are many teachings in the Patent System that would never have been disclosed if the law did not provide some guarantee that the Inventor would not be deprived of his rights in a frivolous way. In this case the science follows



the new art that will not be formulated for many years yet into the future. It is the highest ranking university in the country, yet it confers no degrees upon anyone, it is known as the U.S. Patent Office. The professors are people in all walks of life who have some teaching they have published in the greatest scientific journal in the world , called a Letters Patent. Universities come and go, but this one has the longest continuous history of excellence in teaching the newer arts.

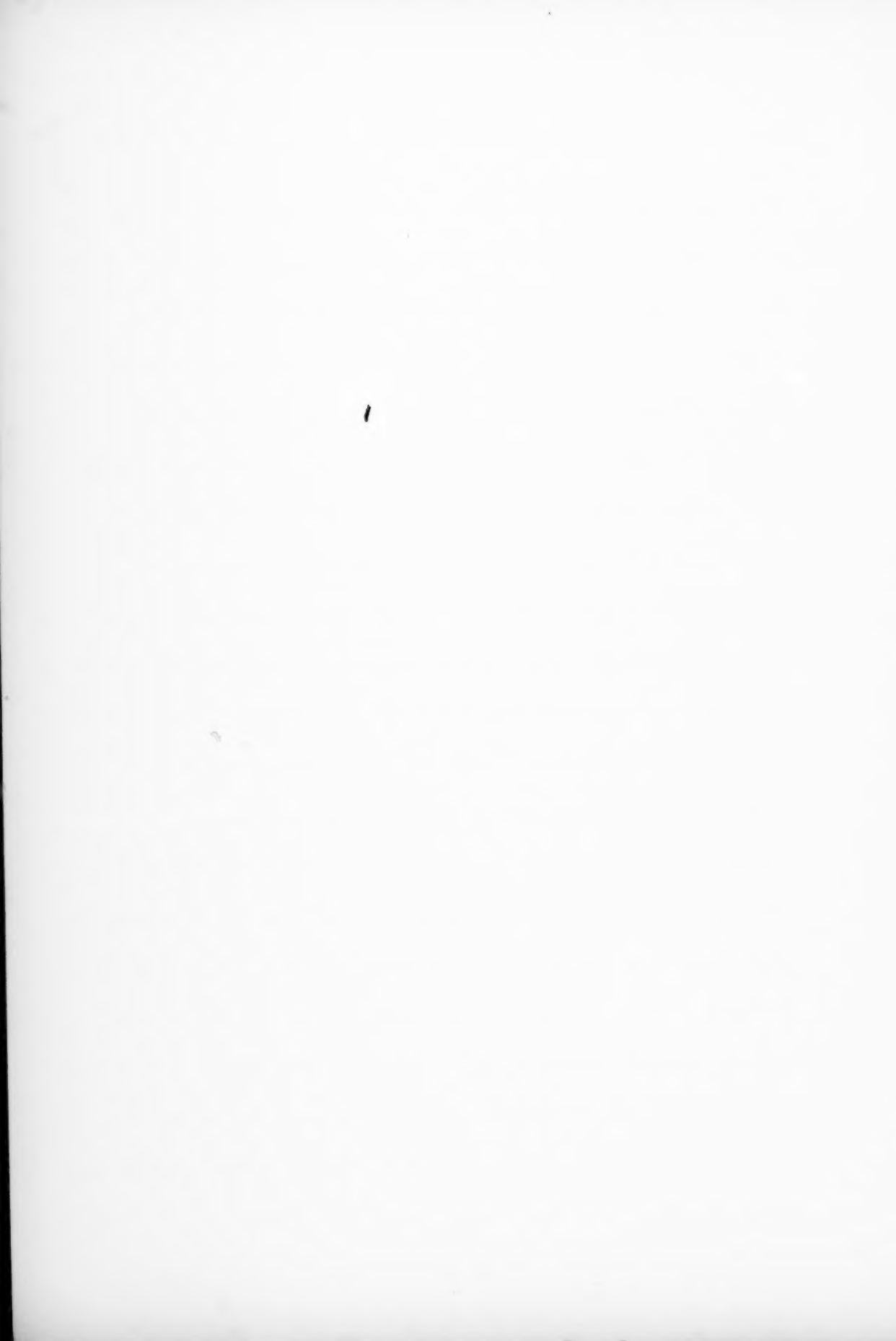
The Petitioner doesn't regret making patents, but regrets never having been reimbursed for their application in commerce as the law did confer those property rights to.

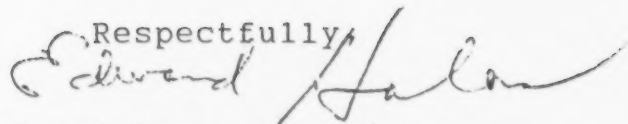
4. Because they are as important as they are, the Patent Office will continue to issue patents, but unless the Courts enforce the payment of Royalties, even within the Government itself, a valuable resource will lose credibility. We really should not permit this to happen.



CONCLUSION

For the reason brought forward, the Petition for Certiorari Writ should be granted. It isn't often that the Supreme Court really has the time to consider the importance of new inventions that bring higher standards of living within the country, or the abuses that the inventors face in this important contribution to commerce. There are other countries that don't have the U.S. type of invention system, and they are not great countries either. Inventions make a great contribution to the better things in the United States, and if the process is damaged, the country will also suffer that injury in time. We need to reaffirm the rights of inventors and to understand the contribution the country derives from the fruits of progress. People don't change easily, and inventors bring about change, but it is necessary to walk into the future or there isn't going to be any for a regressive policy of infringement settlement, in the long long of time.



Respectfully,


Edward Halas, Pettitioner
P.O. Box 2682
Detroit, MI 48231



APPENDIX "A"

No. 252-89C

(Filed June 6,1990)

ORDER

Pursuant to defendant's status report filed May 15,1990, the following is hereby ordered:

1. The above -entitled case is hereby suspended until October 15, 1990, in order to permit the Army to continue and, if possible, conclude the patent rights determination.
2. A Joint status report shall be filed by October 26,1990 , concerning further proceedings.

IT IS SO ORDERED.

BOHDAN A. FUTELY,
Judge.



APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 90-5119

ORDER

In response to the court's July 24, 1990 directive to show cause why Edward Halas' appeal should not be dismissed, Halas opposes dismissal and the United States urges dismissal.

Halas filed suit in the United States Claims Court for the alleged unauthorized use of his patented invention. The United States moved to stay the Claims Court pending proceedings and to remand to the Department of Army to conduct a patent rights determination. On October 13, 1989, the Claims Court suspended proceedings until April 16, 1990 to permit the Army to conduct proceedings. On June 6, 1990 the Claims Court continued the stays until October 5, 1990.

The June 6 orders are not final or appealable. In *Cabot v. United States*, 788 F. 2d 1539, 1542 (Fed Cir. 1986), we determined that an order of a trial remanding a matter to an

an agency for further findings or proceedings
is not final.

Accordingly,

IT IS ORDERED:

Halas appeal is dismissed.

For the Court.

Paul R. Michel
Circuit Judge.

Issued as a mandate: August 27, 1990.